

## **Assembly Bill No. 1959**

### **CHAPTER 214**

An act to amend Sections 114, 600, 603, 1301, 1501, 8321, 12591, 15634, 17106, and 28501 of the Corporations Code, relating to corporations.

[Approved by Governor September 7, 2006. Filed with  
Secretary of State September 7, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

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Existing law sets forth requirements for the governance of various business entities, including, but not limited to, corporations, partnerships, limited liability companies, and capital access companies. Existing law requires specified corporations, partnerships, and limited liability companies to prepare a specified annual report, consisting of, but not limited to, a balance sheet, an income statement, and a statement of changes in financial position accompanied by any report of independent accountants. Existing law requires capital access companies to prepare a specified audit report consisting of, but not limited to, financial statements, including balance sheets, statements of income or loss, statements of changes in capital accounts, and statements of changes in financial position prepared by an independent certified public accountant.

This bill would instead require the specified annual report to consist of a balance sheet, an income statement, and a statement of cashflows accompanied by any report of independent accountants. The bill would specify that, with regard to the specified audit report for capital access companies, financial statements also include statements of cashflows. The bill would make related, conforming, and technical changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 114 of the Corporations Code is amended to read:

114. All references in this division to financial statements, balance sheets, income statements, and statements of cashflows, and all references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation mean those financial statements or comparable statements or items prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters that they purport to present, subject to any specific accounting treatment

required by a particular section of this division. Unless otherwise expressly stated, all references in this division to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and each of its subsidiaries as are required to be included in the consolidated statements under generally accepted accounting principles then applicable and all references to accounting items mean the items determined on a consolidated basis in accordance with the consolidated financial statements. Financial statements other than annual statements may be condensed or otherwise presented as permitted by authoritative accounting pronouncements.

SEC. 2. Section 600 of the Corporations Code is amended to read:

600. (a) Meetings of shareholders may be held at any place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, shareholder meetings shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of shareholders, be deemed present in person or by proxy, and vote at a meeting of shareholders whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (e).

(b) An annual meeting of shareholders shall be held for the election of directors on a date and at a time stated in or fixed in accordance with the bylaws. However, if the corporation is a regulated management company, a meeting of shareholders shall be held as required by the Federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.). Any other proper business may be transacted at the annual meeting. For purposes of this subdivision, “regulated management company” means a regulated investment company as defined in Section 851 of the federal Internal Revenue Code.

(c) If there is a failure to hold the annual meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the organization of the corporation or after its last annual meeting, the superior court of the proper county may summarily order a meeting to be held upon the application of any shareholder after notice to the corporation giving it an opportunity to be heard. The shares represented at the meeting, either in person or by proxy, and entitled to vote thereat shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the articles or bylaws or in this division to the contrary. The court may issue any orders as may be appropriate, including, without limitation, orders designating the time and

place of the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of the meeting.

(d) Special meetings of the shareholders may be called by the board, the chairperson of the board, the president, the holders of shares entitled to cast not less than 10 percent of the votes at the meeting, or any additional persons as may be provided in the articles or bylaws.

(e) A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide shareholders (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a shareholder pursuant to clause (b) of Section 20 for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation shall include a notice that, absent consent of the shareholder pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

SEC. 3. Section 603 of the Corporations Code is amended to read:

603. (a) Unless otherwise provided in the articles, any action that may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, as specified in Section 195, setting forth the action so taken, shall be provided by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Unless the consents of all shareholders entitled to vote have been solicited in writing, both of the following shall apply:

(1) Notice of any shareholder approval pursuant to Section 310, 317, 1152, 1201 or 2007 without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by that approval. Notice shall be given as provided in subdivision (b) of Section 601.

(2) Prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent, to those shareholders entitled to vote who have not consented in writing. Notice shall be given as provided in subdivision (b) of Section 601.

(c) Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholders, may revoke the consent personally or by proxy by a writing received by the corporation prior to the

time that written consents of the number of shares required to authorize the proposed action have been filed with the secretary of the corporation, but may not do so thereafter. The revocation is effective upon its receipt by the secretary of the corporation.

(d) Notwithstanding subdivision (a), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors; provided that the shareholders may elect a director to fill a vacancy, other than a vacancy created by removal, by the written consent of a majority of the outstanding shares entitled to vote.

SEC. 4. Section 1301 of the Corporations Code is amended to read:

1301. (a) If, in the case of a reorganization, any shareholders of a corporation have a right under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, to require the corporation to purchase their shares for cash, that corporation shall mail to each such shareholder a notice of the approval of the reorganization by its outstanding shares (Section 152) within 10 days after the date of that approval, accompanied by a copy of Sections 1300, 1302, 1303, and 1304 and this section, a statement of the price determined by the corporation to represent the fair market value of the dissenting shares, and a brief description of the procedure to be followed if the shareholder desires to exercise the shareholder's right under those sections. The statement of price constitutes an offer by the corporation to purchase at the price stated any dissenting shares as defined in subdivision (b) of Section 1300, unless they lose their status as dissenting shares under Section 1309.

(b) Any shareholder who has a right to require the corporation to purchase the shareholder's shares for cash under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, and who desires the corporation to purchase shares shall make written demand upon the corporation for the purchase of those shares and payment to the shareholder in cash of their fair market value. The demand is not effective for any purpose unless it is received by the corporation or any transfer agent thereof (1) in the case of shares described in clause(A) or (B) of paragraph (1) of subdivision (b) of Section 1300 (without regard to the provisos in that paragraph), not later than the date of the shareholders' meeting to vote upon the reorganization, or (2) in any other case within 30 days after the date on which the notice of the approval by the outstanding shares pursuant to subdivision (a) or the notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder.

(c) The demand shall state the number and class of the shares held of record by the shareholder which the shareholder demands that the corporation purchase and shall contain a statement of what that shareholder claims to be the fair market value of those shares as of the day before the announcement of the proposed reorganization or short-form merger. The statement of fair market value constitutes an offer by the shareholder to sell the shares at that price.

SEC. 5. Section 1501 of the Corporations Code is amended to read:

1501. (a) The board shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year, unless in the case of a corporation with less than 100 holders of record of its shares (determined as provided in Section 605) this requirement is expressly waived in the bylaws. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). This report shall contain a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year, accompanied by any report thereon of independent accountants or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

Unless so waived, the report shall be sent to the shareholders at least 15 (or, if sent by third-class mail, 35) days prior to the annual meeting of shareholders to be held during the next fiscal year, but this requirement shall not limit the requirement for holding an annual meeting as required by Section 600.

Notwithstanding Section 114, the financial statements of any corporation with fewer than 100 holders of record of its shares (determined as provided in Section 605) required to be furnished by this subdivision and subdivision (c) are not required to be prepared in conformity with generally accepted accounting principles if they reasonably set forth the assets and liabilities and the income and expense of the corporation and disclose the accounting basis used in their preparation.

(b) In addition to the financial statements required by subdivision (a), the annual report of any corporation having 100 or more holders of record of its shares (determined as provided in Section 605) either not subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934, or exempted from those reporting requirements by Section 12(g)(2) of that act, shall also describe briefly both of the following:

(1) Any transaction (excluding compensation of officers and directors) during the previous fiscal year involving an amount in excess of forty thousand dollars (\$40,000) (other than contracts let at competitive bid or services rendered at prices regulated by law) to which the corporation or its parent or subsidiary was a party and in which any director or officer of the corporation or of a subsidiary or (if known to the corporation or its parent or subsidiary) any holder of more than 10 percent of the outstanding voting shares of the corporation had a direct or indirect material interest, naming the person and stating the person's relationship to the corporation, the nature of the person's interest in the transaction and, where practicable, the amount of the interest; provided that in the case of a transaction with a partnership of which the person is a partner, only the interest of the partnership need be stated; and provided further that no report need be made in the case of any transaction approved by the shareholders (Section 153).

(2) The amount and circumstances of any indemnification or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to any officer or director of the corporation pursuant to Section 317; provided that no report need be made in the case of indemnification approved by the shareholders (Section 153) under paragraph (2) of subdivision (e) of Section 317.

(c) If no annual report for the last fiscal year has been sent to shareholders, the corporation shall, upon the written request of any shareholder made more than 120 days after the close of that fiscal year, deliver or mail to the person making the request within 30 days thereafter the financial statements required by subdivision (a) for that year. A shareholder or shareholders holding at least 5 percent of the outstanding shares of any class of a corporation may make a written request to the corporation for an income statement of the corporation for the three-month, six-month or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request and a balance sheet of the corporation as of the end of the period and, in addition, if no annual report for the last fiscal year has been sent to shareholders, the statements referred to in subdivision (a) for the last fiscal year. The statements shall be delivered or mailed to the person making the request within 30 days thereafter. A copy of the statements shall be kept on file in the principal office of the corporation for 12 months and it shall be exhibited at all reasonable times to any shareholder demanding an examination of the statements or a copy shall be mailed to the shareholder.

(d) The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

(e) In addition to the penalties provided for in Section 2200, the superior court of the proper county shall enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(f) In any action or proceeding under this section, if the court finds the failure of the corporation to comply with the requirements of this section to have been without justification, the court may award an amount sufficient to reimburse the shareholder for the reasonable expenses incurred by the shareholder, including attorneys' fees, in connection with the action or proceeding.

(g) This section applies to any domestic corporation and also to a foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

SEC. 6. Section 8321 of the Corporations Code is amended to read:

8321. (a) A corporation shall notify each member yearly of the member's right to receive a financial report pursuant to this subdivision. Except as provided in subdivision (c), upon written request of a member, the board shall promptly cause the most recent annual report to be sent to

the requesting member. An annual report shall be prepared not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) A balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

(2) A statement of the place where the names and addresses of the current members are located.

(3) Any information required by Section 8322.

(b) The report required by subdivision (a) shall be accompanied by any report thereon of independent accountants, or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(c) Subdivision (a) does not apply to any corporation that receives less than ten thousand dollars (\$10,000) in gross revenues or receipts during the fiscal year.

SEC. 7. Section 12591 of the Corporations Code is amended to read:

12591. (a) A corporation shall notify each member yearly of the member's right to receive a financial report pursuant to this subdivision. Except as provided in subdivision (c), upon written request of a member, the board shall promptly cause the most recent annual report to be sent to the requesting member. An annual report shall be prepared not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) A balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

(2) A statement of the place where the names and addresses of the current members are located.

(3) Any information required by Section 12592.

(b) The report required by subdivision (a) shall be accompanied by any report thereon of independent accountants, or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(c) This section does not apply to corporations that do not have more than 25 members at any time during the fiscal year.

SEC. 8. Section 15634 of the Corporations Code is amended to read:

15634. (a) Upon the request of a limited partner, the general partners shall promptly deliver to the limited partner, at the expense of the partnership, a copy of the information required to be maintained by subdivision (a), (b), or (d) of Section 15615.

(b) Each limited partner has the right upon reasonable request to each of the following:

(1) Inspect and copy during normal business hours any of the partnership records required to be maintained by Section 15615.

(2) Obtain from the general partners, promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax or information returns for each year.

(c) In the case of any limited partnership with more than 35 limited partners:

(1) The general partners shall cause an annual report to be sent to each of the partners not later than 120 days after the close of the fiscal year. That report shall contain a balance sheet as of the end of the fiscal year and an income statement and a statement of cashflows for the fiscal year.

(2) Limited partners representing at least 5 percent of the interests of limited partners may make a written request to a general partner for an income statement of the limited partnership for the initial three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request and a balance sheet of the partnership as of the end of that period. The statement shall be delivered or mailed to the limited partners within 30 days thereafter.

(3) The financial statements referred to in this section shall be accompanied by the report thereon, if any, of the independent accountants engaged by the partnership or, if there is no report, the certificate of a general partner of the partnership that the financial statements were prepared without audit from the books and records of the limited partnership.

(d) The general partners shall promptly furnish to a limited partner a copy of any amendment to the partnership agreement executed by a general partner pursuant to a power of attorney from the limited partner.

(e) The general partners shall send to each of the partners within 90 days after the end of each taxable year the information necessary to complete federal and state income tax or information returns, and, in the case of a limited partnership with 35 or fewer limited partners, a copy of the limited partnership's federal, state, and local income tax or information returns for the year.

(f) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(g) In any action under this section, if the court finds the failure of the partnership to comply with the requirements of this section to have been without justification, the court may award an amount sufficient to reimburse the partners bringing the action for the reasonable expenses incurred by the partners, including attorneys' fees, in connection with the action or proceeding.

(h) Any waiver by a partner of the rights provided in this section shall be unenforceable.



(i) Any request, inspection, or copying by a limited partner may be made by the limited partner or by the limited partner's agent or attorney.

SEC. 9. Section 17106 of the Corporations Code is amended to read:

17106. (a) Upon the request of a member or a holder of an economic interest, for purposes reasonably related to the interest of that person as a member or a holder of an economic interest, a manager shall promptly deliver, in writing, to the member or holder of an economic interest, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2), and (4) of subdivision (a) of Section 17058, and any written operating agreement of the limited liability company.

(b) Each member, manager, and holder of an economic interest has the right upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or holder of an economic interest, to each of the following:

(1) To inspect and copy during normal business hours any of the records required to be maintained by Section 17058.

(2) To obtain in writing from the limited liability company promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax or information returns for each year.

(c) In the case of any limited liability company with more than 35 members:

(1) A manager shall cause an annual report to be sent to each of the members not later than 120 days after the close of the fiscal year. That report, which may be sent by electronic transmission by the limited liability company (paragraph (1) of subdivision (o) of Section 17001), shall contain a balance sheet as of the end of the fiscal year and an income statement and a statement of cashflows for the fiscal year.

(2) Members representing at least 5 percent of the voting interests of members, or three or more members, may make a written request to a manager for an income statement of the limited liability company for the initial three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request, and a balance sheet of the limited liability company as of the end of that period. The statement shall be delivered or mailed to the members within 30 days thereafter.

(3) The financial statements referred to in this section shall be accompanied by the report thereon, if any, of the independent accountants engaged by the limited liability company or, if there is no report, the certificate of a manager of the limited liability company that the financial statements were prepared without audit from the books and records of the limited liability company.

(d) A manager shall promptly furnish to a member a copy of any amendment to the articles of organization or operating agreement executed by a manager pursuant to a power of attorney from the member. The articles of organization or operating agreement may be sent by electronic transmission by the limited liability company.

(e) The limited liability company shall send or cause information to be sent in writing to each member or holder of an economic interest within 90 days after the end of each taxable year the information necessary to complete federal and state income tax or information returns, and, in the case of a limited liability company with 35 or fewer members, a copy of the limited liability company's federal, state, and local income tax or information returns for the year.

(f) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(g) In any action under this section, if the court finds the failure of the limited liability company to comply with the requirements of this section is without justification, the court may award an amount sufficient to reimburse the person bringing the action for the reasonable expenses incurred by that person, including attorneys' fees, in connection with the action or proceeding.

(h) Any waiver of the rights provided in this section shall be unenforceable.

(i) Any request, inspection, or copying by a member or holder of an economic interest may be made by that person or by that person's agent or attorney.

SEC. 10. Section 28501 of the Corporations Code is amended to read:

28501. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period that the commissioner may by regulation or order specify, file with the commissioner an audit report containing all of the following:

(a) Financial statements (including balance sheets, statements of income or loss, statements of changes in capital accounts, and statements of cashflows or, in the case of a licensee that is a California nonprofit corporation, comparable financial statements) for, or as of, the end of the fiscal year, prepared, with audit, by an independent certified public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information that the commissioner may by regulation or order require.